

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRESENIUS MEDICAL CARE  
HOLDINGS, INC., et al.,

No. C 03-1431 SBA

Plaintiffs,

**ORDER**

v.

[Docket Nos. 436, 441, 446, 448, 473, 493,  
641, 648]

BAXTER INTERNATIONAL, INC., et al.,

Defendants.

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On May 8, 2006, Fresenius filed an Administrative Motion To Continue Hearing Scheduled For May 16, 2006 [Docket No. 641]. On May 9, 2006, Baxter filed an Opposition to Fresenius' Administrative Motion. On May 10, 2006, Fresenius filed an Administrative Motion For Leave to File a Reply to Baxter's Opposition [Docket No. 648].

The only basis for Fresenius' Administrative Motion [Docket No. 641] is to accommodate the schedule of Ms. Juanita Brooks, an attorney affiliated with Fish & Richardson, who filed her appearance in this action on April 11, 2006. The Court does not require Ms. Brook's presence at the hearing, however. Ms. Brooks did not sign any of the briefs pending before this Court. In fact, she filed her appearance after all of the briefing had been completed. Further, Fresenius is currently represented by two different law firms and there are at least eleven attorneys of record in this matter. The Court

1 presumes that each attorney of record is fully capable of adequately representing Fresenius at the  
2 hearing, if the Court deems one necessary. Fresenius will suffer no prejudice due to Ms. Brooks'  
3 unavailability.

4 Further, both parties are hereby advised that the Court is **NOT** moving the trial date back two  
5 months to accommodate Ms. Brooks' schedule, or any other attorney's schedule. This case has been  
6 pending for over three years and will commence on June 19, 2006 as scheduled. The Court assumes  
7 that, since the parties had ample time and resources to devote to briefing this Administrative Motion  
8 extensively, they are fully prepared to comply with their obligations relating to the impending trial.

9 The Court further reminds the parties that it has been asked to review no less than ten motions  
10 consisting of several hundred pages of briefing and over a thousand pages of evidentiary material in a  
11 very short time period. Accordingly, the parties are strongly advised not to file any further motions with  
12 the Court without first engaging in a meaningful meet and confer in an effort to informally resolve their  
13 disputes without the need for Court intervention. Filing numerous administrative motions for the Court's  
14 consideration only serves to deplete scarce judicial resources and detracts from the Court's ability to  
15 timely resolve the substantive motions that are still pending before the Court.

16 Accordingly,

17 IT IS HEREBY ORDERED THAT Fresenius' Administrative Motion To Continue Hearing  
18 Scheduled For May 16, 2006 [Docket No. 641] is DENIED. Fresenius' Administrative Motion For  
19 Leave To File a Reply to Baxter's Opposition [Docket No. 648] is also DENIED. Due to the purely  
20 administrative nature of the Motion, the Court does not find that additional briefing on this matter is  
21 necessary or helpful.

22 IT IS FURTHER ORDERED THAT the May 16, 2006 hearing will remain on schedule with  
23 respect to the following motions:<sup>1</sup>

- 24 (a) Fresenius' Motion for Summary Judgment of Invalidity of the Asserted  
25 Claims of U.S. Patent Nos. 5,326,476 and 5,744,027 [Docket No. 441],  
26 and

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27  
28 <sup>1</sup>The Court may still, in its discretion, adjudicate these motions without a hearing, in which case  
the Clerk will notify the parties that no appearance is necessary.

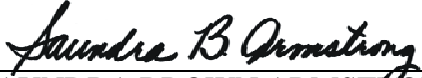
- 1 (b) Baxter's Motion to Bar Fresenius' Proffered Damages Expert Professor  
2 Rubinfeld [Docket No. 446].

3 IT IS FURTHER ORDERED THAT the May 16, 2006 hearing is **VACATED** with respect to  
4 the following motions, due to the fact that the Court considers these matters fully submitted on the  
5 papers and appropriate for resolution without a hearing:

- 6 (a) Fresenius' Motion for Summary Judgment of Invalidity of the Asserted  
7 Claims of U.S. Patent Nos. 5,247,434 and 6,284,131 [Docket No. 436],  
8 (b) Baxter's Motion for Partial Summary Judgment of Validity [Docket No.  
9 448],  
10 (c) Baxter's Motion to Strike Fresenius' Best Mode and Anticipation  
11 Defenses [Docket No. 473], and  
12 (d) Baxter's Motion to Strike PTO Documents [Docket No. 493].

13 IT IS SO ORDERED.

14  
15 Dated: 5/10/06

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge